

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2005 DEC -7 PM 3:01

IN THE MATTER OF:)
UNITED STATES)
DEPARTMENT OF THE AIR FORCE)
Hill Air Force Base, Utah)
Ogden Air Logistics Center)
_____)

DOCKET NO. ~~CWA-08-2006-0004~~ **FILED**
FEDERAL FACILITY **HEARING CLERK**
COMPLIANCE AGREEMENT

I. SCOPE AND PURPOSE

1. The United States Environmental Protection Agency, Region 8, (EPA) and the United States Department of the Air Force, Hill Air Force Base (HAFB) are the parties to this Federal Facility Compliance Agreement (Agreement). The express purpose of the parties in entering into this Agreement is to further the goals of the Clean Water Act (CWA), specifically sections 101, 301, 313, and 402 of the CWA, 33 U.S.C. §§ 1251, 1311, 1323, and 1342.

2. The parties enter into this Agreement pursuant to Executive Order 12088, 43 Fed. Reg. 47, 707 (October 13, 1978), and section 313 of the CWA, 33 U.S.C. § 1323. The parties enter into this Agreement because EPA alleges discharges without a National Pollutant Discharge Elimination System (NPDES) permit and discharges in violation of an NPDES permit have occurred at HAFB.

3. HAFB recognizes its obligation to comply with the CWA and with section 1-3 of Executive Order 12088, which authorizes EPA to monitor Federal compliance with applicable pollution control standards. This Agreement contains a "plan," as described in section 1-601 of Executive Order 12088, to achieve and maintain compliance with applicable water pollution control standards at HAFB.

II. STATEMENT OF FACTS AND CONCLUSIONS OF LAW

4. For the purpose of this Agreement, the following constitutes a summary of the findings upon which this Agreement is based. None of the facts related herein shall be considered admissions by any party. This paragraph contains findings of fact determined solely by the parties and shall not be used by any person related or unrelated to this Agreement for purposes other than determining the basis of this Agreement.

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into the waters of the United States by any person except in accordance with other specified sections of the CWA, including section 402, 33 U.S.C. § 1342.

6. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of any pollutant into the waters of the United States. Each violation of an NPDES permit, and each discharge of a pollutant that is not authorized by a NPDES permit, constitutes a violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

7. A NPDES permit, which would specify conditions under which HAFB may discharge non-storm water wastewater into the storm drain system which discharges to Kays Creek which is a tributary to the Great Salt Lake, has not been issued to HAFB.

8. EPA, the Utah Department of Environmental Quality (UDEQ) and the North Davis Sanitary Sewer District conducted a multi-media compliance inspection at HAFB on October 21 to October 25, 2002. This inspection identified several possible violations including: several cross connections of non-storm water discharges to the storm sewer system which may lead to discharges of pollutants without an NPDES permit; failure to address contaminated storm water discharges from the hazardous waste storage area; and failure to characterize the dilution of categorical waste streams before they are discharged to the North Davis Sanitary Sewer District so that the appropriate pretreatment limits could be established.

9. HAFB's December 10, 2003 response to the multi-media inspection report stated that eleven (11) cross connections to the storm sewer system have been identified to date. These cross connections include overflows from the base swimming pools, and non-contact cooling water which may include the addition of chemicals such as scale inhibitors.

10. The discharges of pollutants to waters of the United States described in paragraph 9 above are not permitted discharges and may constitute violations of section 301 (a) of the CWA, 33 U.S.C. § 1311(a).

11. HAFB applied for storm water coverage under the Utah Pollutant Discharge Elimination System (UPDES) Permit No. UTR000000, General Multi-Sector Permit for Storm Water Associated with Industrial Activities (MSGP), and received coverage under this permit in May 1998. The certification number associated with the storm water permit coverage for HAFB is UTR000444.

12. Appendix II.S 3.a.(4) of UPDES Permit No. UTR000000 requires that the permittee complete a comprehensive site compliance evaluation of areas contributing to storm water discharges associated with industrial activity a minimum of once per year. From this evaluation, the permittee must determine if any portion of the Storm Water Pollution Prevention Plan (SWPPP) must be updated and changes made to the site to address possible discharges from industrial areas.

13. Annual Site Storm Water Compliance Reports completed by HAFB from 1999 to 2001 identified the area outside of Building 514 where hazardous materials and wastes are stored as failing to meet the storm water compliance requirements for this area.

14. Appendix II.S.3.a.(4)(b) of UPDES Permit No. UTR000000 requires that any pollution prevention measures and controls identified in the SWPPP shall be revised as appropriate within two (2) weeks of the evaluation and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than twelve (12) weeks after the evaluation.

15. At the time of the multi-media compliance inspection, HAFB had budgeted for, but not yet corrected all the deficiencies identified during the 1999 - 2001 Annual Site Storm Water Compliance Reports, which is a violation of UPDES permit No. UTR000000.

16. HAFB discharges its sanitary and industrial wastewater to the Publicly Owned Treatment Works (POTW) owned by the North Davis Sewer District. Prior to discharge to the POTW, industrial wastes are first transported to the industrial wastewater treatment plant (IWTP) at HAFB, either through hard piping or transport via carboys or containers.

17. HAFB has several operations on site which include processes subject to the Metal Finishing Categorical Pretreatment Standards outlined in 40 C.F.R. part 433, and has been issued an Industrial User Permit by the North Davis Sewer District.

18. 40 C.F.R. § 403.6(e) requires that industrial permit limits apply a combined waste stream formula which considers the amount of dilution of a categorical waste stream prior to discharge to the POTW.

19. The sampling location for the categorical discharges is at the IWTP. This location includes both metal finishing waste as well as numerous sources of other non-categorical wastewater. The percentage of categorical wastes compared to non-categorical wastes discharged to the POTW, while unknown at the time of the inspection, is now available in a report entitled, "Quantity and Quality of Industrial Waste Collection System (IWCS) Discharges, 2004 IWC Study, Hill Air Force Base, Utah."

20. HAFB initiated a study in 2001 to determine the percentage of categorical wastes and non-categorical wastes discharged to the IWTP. The report was finalized 31 August 2004.

21. HAFB has identified the amount of dilution the categorical waste stream receives, and therefore the POTW is now able to apply the correct combined waste stream formula.

III. COMPLIANCE REQUIREMENTS

22. Within thirty (30) days after the effective date of this Agreement, HAFB shall:

- a. submit a report on the characterization of the cross connections to the storm sewer at the base and a plan to eliminate or permit all cross connections. The report shall include the following information:
 - i. Location of the cross connection;

- ii. Flow rates of each cross connection;
- iii. A description of the processes or activities in the building which discharges to the cross connection to provide a characterization of the waste stream;
- iv. A description of any known chemicals added to the cross connections;
- v. Chemical analysis, based on the waste stream characterization, of each of the cross connections; and
- vi. A plan including itemized costs for eliminating or permitting each cross connection; and
- b. Submit a report to EPA and North Davis Sewer District on the sources of flow to the IWTP. The report will contain the following information:
 - i. Tracing of all lines and surveying all buildings in the industrial area to determine which sources lead to the IWTP;
 - ii. Actual flow rates;
 - iii. Any chemical analysis of discharges to the IWTP required by the North Davis Sewer District.

23. Within sixty (60) days after the effective date of this Agreement, HAFB shall:

- a. eliminate or apply for UPDES permit coverage for each cross connection to the storm sewer system; and
- b. initiate construction required to cover the outside storage area near Building 514 to address storm water concerns at this location.

24. Within sixty (60) days after the issuance of the amended industrial wastewater permit by North Davis Sewer District, which includes the appropriate pretreatment limits for the combined waste stream from HAFB to the POTW, HAFB shall submit certification that it will be able to meet the pretreatment limits without additional treatment.

25. If HAFB cannot meet the adjusted pretreatment limits discussed in paragraph 24, HAFB must submit a statement as such and a proposed schedule to comply with the adjusted pretreatment limits within ninety (90) days after the new pretreatment limits are established.

26. EPA will review the submission described in paragraph 25 and may: (a) approve the plan and time line; (b) approve the plan and time line with modifications; or (c) disapprove the submission and direct HAFB to re-submit the document after incorporating EPA's comments.

27. Upon receipt of a notice of disapproval or a request for a modification as described in paragraph 26 above, HAFB shall, within fifteen (15) days, or such longer time as specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the proposal. HAFB shall have the opportunity to object in writing to the notification of disapproval or request for modification given pursuant to paragraph 26 within fifteen (15) days of receipt of such notification. EPA and HAFB shall have an additional thirty (30) days from the receipt by EPA of the notification of

objection to reach agreement. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision to HAFB, and the issue shall be resolved according to the Dispute Resolution requirements of Section V.

28. Upon EPA approval, or approval with modification of the submission, the plan and its implementation schedule shall be incorporated into this Order.

29. HAFB shall submit a final report within sixty (60) days after completion of the requirements outlined in paragraphs 22 - 28 detailing the actions taken to comply with the Agreement.

IV. NOTIFICATION

30. Unless otherwise specified, two copies of any document required to be submitted to EPA shall be in writing and sent to EPA Project Manager Darcy O'Connor at the following address:

Darcy O'Connor
(Mail Code 8ENF-W-NP)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

31. Documents will be considered to be timely submittals by HAFB if they are post marked on or before the applicable due date.

V. DISPUTE RESOLUTION

32. If a dispute arises under this Agreement, the procedures of this Section shall apply. During the pendency of any dispute, HAFB agrees that it shall continue to implement those portions of this Agreement which are not in dispute and which are not dependent upon the matters in dispute. The pendency of any dispute under this Section shall not affect HAFB's responsibility to perform the work required by this Agreement in a timely manner, except that the time period for completion of work affected by such dispute may, at EPA's discretion, be extended for a period of time not to exceed the actual time taken to resolve any dispute in accordance with the procedures specified herein.

33. The parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager or immediate supervisor level. With respect to EPA, "Project Manager" means Darcy O'Connor, or any duly identified successor. With respect to HAFB, "Project Manager" means Mr. Darrin Wray, (75 CEG/CEVC), or any duly identified successor. If resolution cannot be achieved informally, then the procedures of this Section shall be implemented to resolve the dispute.

34. Within twenty-one (21) days (or a longer reasonable period as agreed to by the parties) after HAFB concludes that a dispute cannot be resolved informally, HAFB shall submit to EPA a written statement of dispute setting forth the nature of the dispute, HAFB's position with respect to the dispute, and the information HAFB is relying upon to support its position. If HAFB does not provide such written statement to EPA within the twenty-one (21) day period (or a longer reasonable period as agreed to by the parties), HAFB shall be deemed to have agreed with EPA's position with respect to the dispute.

35. Upon EPA's receipt of the written statement of dispute from HAFB, the parties shall engage in dispute resolution among the Project Managers and/or their immediate supervisors. The parties shall have fourteen (14) days (or a longer reasonable period as agreed to by the parties) from the receipt by EPA of the written statement of dispute to resolve the dispute. During this period, the Project Managers shall meet or confer as many times as necessary to discuss and attempt resolution of the dispute. If agreement cannot be reached on the issue in dispute within this period, HAFB may, within twenty-one (21) days after the conclusion of the dispute resolution period, submit a written notice to EPA elevating the dispute to the Dispute Resolution Committee (DRC) for resolution. If HAFB does not elevate the dispute to the DRC within this twenty-one (21) day period, HAFB shall be deemed to have agreed with EPA's position with respect to the dispute.

36. The DRC will serve as a forum for resolution of disputes for which agreement has not been reached pursuant to the foregoing paragraphs in this Section. Following elevation of a dispute to the DRC, the DRC shall have thirty (30) days to unanimously resolve the dispute. EPA's designated representative on the DRC is the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, EPA, Region 8 (currently Carol Rushin). HAFB's designated representative is the Environmental Management Division Chief (75 CEG/CEV), (currently Dr. Robert James). Delegation of the authority from a Party's representative on the DRC to an alternate shall be provided to the other Party.

37. If unanimous resolution by the DRC is not achieved within this thirty (30) day period, EPA's representative on the DRC shall issue a written position on the dispute within ten (10) days. HAFB, within twenty-one (21) days after issuance of EPA's written position, may submit a written Notice of Dispute to the Regional Administrator of EPA, Region 8 and the HAFB Wing Commander for resolution of the dispute. In the event that the dispute is not elevated to the Regional Administrator of EPA Region 8 and the HAFB Wing Commander within the designated twenty-one (21) day period, HAFB shall be deemed to have agreed with EPA's position as a final resolution of the dispute. If the dispute is raised to the Regional Administrator of EPA, Region 8, and the HAFB Wing Commander, and it cannot be unanimously be resolved within thirty (30) days, then the Regional Administrator of EPA, Region 8, shall make a final resolution of the dispute.

38. Within twenty-one (21) days of final resolution of a dispute pursuant to the procedures specified in this Section, HAFB shall incorporate the resolution and final determination into the appropriate statement of work, plan, schedule, or procedures and

proceed to implement this Agreement according to the amended statement of work, plan, schedule, or procedures.

39. Resolution of a dispute pursuant to this Section of the Agreement constitutes a final resolution of such dispute arising under this Agreement. The parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section of the Agreement. However, resolution of disputes pursuant to this Section shall not diminish the existing rights of either party to pursue administrative or legal action otherwise available under existing law, regulation, or administrative procedures.

VI. EXTENSIONS

40. HAFB agrees to implement this Agreement in accordance with the schedules set forth herein. HAFB further agrees to adopt all reasonable measures to avoid or minimize any delays in implementation of this Agreement.

41. A scheduled date shall be extended upon receipt of a timely request for extension where good cause exists for the requested extension. Any request for extension shall be made in writing and mailed to EPA at least thirty (30) days prior to the scheduled date, except an extension request based on a force majeure (defined in paragraph 43 of this Agreement). EPA will render its decision within fourteen (14) days of receipt of the extension request. If an oral decision is issued, it shall be confirmed by EPA in writing within twenty-four (24) hours. If EPA does not render its decision within the fourteen (14) day period or if HAFB disagrees with the decision, the dispute resolution procedures of Section V shall control.

42. Any request for an extension shall be provided to EPA in accordance with Section IV, Notification. The request shall specify: (a) the scheduled date that is sought to be extended; (b) the length of the extension sought; (c) the good cause(s) for the extension, see paragraph 43 below; and (d) any related scheduled dates that will be affected if the extension is or is not granted.

43. Good cause for an extension includes, but is not limited to, a force majeure event. HAFB shall bear the burden of proof that a particular event constitutes an event of force majeure; that any delay is due to an event of force majeure; and the length of any delay is caused by such an event. Force majeure is defined as any event or circumstance arising from causes beyond the control of HAFB or entities controlled by HAFB, including, but not limited to contractors and subcontractors, which could not have been overcome by the due diligence of HAFB or the entities controlled by HAFB. Force majeure may arise by reason of events, including but not limited to, acts of God; fire; war; acts of terrorism; insurrection; civil disturbance; explosion; adverse weather conditions that cannot be reasonably anticipated; unusual delays in transportation, beyond the control of HAFB; restraint by court order or order of public authority; inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority other than the Air Force; delays caused by compliance with applicable statutes or

regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and failure to obtain approval of adequate authorizations and/or appropriations from Congress, if the Air Force shall have made timely request for such funds as part of the budgetary process as set forth in Section X of this Agreement. A Force Majeure shall also include any strike or other labor dispute not within the control of the Parties affected hereby.

VII. MODIFICATION

44. This Agreement may be modified by mutual consent of the parties at any time prior to its termination. The parties agree, subject to relevant considerations, including the facts, circumstances and status of compliance with this Agreement, to meet and negotiate in good faith any proposed modification of any provision of this Agreement. Such modification may be based on new information, including information that became available, or conditions that became known, after the Agreement was finalized. Any such modification shall be in writing and shall be effective when signed by all the parties. Any such valid modification is hereby incorporated into this Agreement by reference. EPA shall be the last signatory on any modification to this Agreement.

45. In the event that there is an amendment of the CWA or the regulations promulgated under the CWA, or in the event that amendments to this Agreement are dictated by resolution of disputes pursuant to Section V of this Agreement, the affected provisions of this Agreement Will be renegotiated as necessary. Disagreements in renegotiation shall be resolved pursuant to the Dispute Resolution provisions of this Agreement. During the pendency of any request for renegotiation, this Agreement, to the extent it is not specifically abrogated by EPA, shall remain in effect to the extent permitted by law.

VIII. TERMINATION

46. This Agreement shall terminate once HAFB has met all of its obligations herein as determined by the mutual consent of the parties and evidenced in writing.

IX. RIGHT OF ENTRY

47. EPA, its contractors, and other authorized representative shall have the right to enter all areas of HAFB covered by this Agreement to conduct any inspection, including but not limited to record inspection, sampling, testing, or monitoring they believe is necessary to check compliance with this Agreement. This paragraph in no way affects any other right of entry or inspection under federal or state law. EPA and its contractors agree to abide by security requirements of HAFB.

X. FUNDING

48. In the event that existing funding is not sufficient, it is the expectation of the parties to this Agreement that all obligations of HAFB arising under this Agreement will be fully funded with funds requested specifically to comply with this Agreement. HAFB shall request, through the Department of the Air Force and the Department of Defense, all funds and/or authorizations necessary to meet the conditions of this Agreement. With regard to funding, the timetables, schedules and courses of action reached in implementation of this Agreement are fixed and definite except to the extent that the Congress of the United States may fail to approve authorizations and/or appropriations requests necessary to execute them. Although failure to obtain approval of adequate authorization and/or appropriations from Congress may alter the established timetable and schedules of this Agreement, it does not release HAFB from its obligation to comply with the CWA. If sufficient funds are not appropriated by the Congress as requested and existing funds are not available to achieve compliance with the schedules provided in this Agreement, then HAFB shall report the lack of funds and Section VI, Extensions, shall apply.

49. Any requirement for the payment or obligation of funds by HAFB, established by the terms of this Agreement, shall be subject to the availability of the funds or HAFB receiving appropriated funds as part of this Agreement, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted within the terms delineated in this Agreement.

50. If funds are not available to fulfill HAFB's obligations under this Agreement, the EPA reserves the right to initiate an action against any other person, or to take any action which would be appropriate absent this Agreement.

51. Failure to obtain adequate funds or appropriations does not, in any way, release HAFB from its obligation to comply with the Clean Water Act.

XI. GENERAL PROVISIONS

52. Compliance with the terms of this Agreement in no way affects or relieves HAFB of its obligation to comply with all applicable requirements of the CWA and regulations promulgated there under, or other applicable requirements of Federal, state, or local law.

53. This Agreement does not constitute a permit and does not relieve HAFB of any obligation to apply for, obtain and comply with an NPDES Permit for its facility.

54. This Agreement was negotiated and executed by the parties in good faith to ensure compliance with the law. No part of this Agreement constitutes or should be interpreted or construed as an admission of fact or of liability under Federal, state, or local statutes, regulations, ordinances, or common law or as an admission of any violations of any law, regulations, ordinances, or common law. By entering into this Agreement, HAFB does not waive, other than provided for in this Agreement, any claim, right, or defense that they might raise in any other proceeding or action.

XII. SEVERABILITY

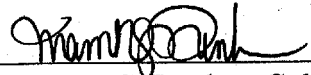
55. If any provision or authority of this Agreement or the application of this Agreement to any party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Agreement shall remain in force and shall not be affected thereby.

XII. EFFECTIVE DATE

56. The effective date of this Agreement shall be the date signed by EPA.

IT IS SO AGREED:

17 NW 05
Date


Sharon K. G. Dunbar, Colonel, USAF
Commander, 75th Air Base Wing

12/05/2005
Date

Eddie A. Sierra
for Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice
U.S. Environmental Protection Agency
Region 8

IN THE MATTER OF:

UNITED STATES
DEPARTMENT OF THE AIR FORCE
Hill Air Force Base, Utah
Ogden Air Logistics Center

Docket No. CWA-08-2006-0004

CERTIFICATE OF SERVICE

I certify that the attached Federal Facility Compliance Agreement was sent this day in the following manner to the addressees below:

Original and one copy hand delivered to:

Regional Hearing Clerk
U.S. Environmental Protection
Agency
Region VIII
999 18th Street, Suite 500
Denver, CO 80202-2405

Copy by first class mail to:

Mr. Ryan Shaw
Attorney/Advisor
Office of the Staff Judge Advocate
6026 Cedar Lane, Bldg. 1278
Hill Air Force Base, Utah 84056

7 December 2005
Date

L. E. M. Ross
Name